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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,337	01/29/2001	Glenn Ricart	300 / 4	8685
27538	7590	05/06/2004	EXAMINER	
KAPLAN & GILMAN , L.L.P. 900 ROUTE 9 NORTH WOODBRIDGE, NJ 07095			BRAGDON, REGINALD GLENWOOD	
			ART UNIT	PAPER NUMBER
			2188	
DATE MAILED: 05/06/2004				

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Please find below and/or attached an Office communication concerning this application or proceeding.

8K

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/772,337	RICART ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Reginald G. Bragdon	2188	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 April 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6 and 12-14 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-6 and 12-14 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

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## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1-6 and 12-13 are objected to because of the following informalities:

In claim 1, line 4, add --access server-- after “provider”.

In claim 1, line 11, add --at least one service provider-- before “access”.

In claim 12, line 4, add --access server-- after “provider”.

In claim 13, line 2, replace “it has not found” with --the at least one service provider access server does not have--.

In claim 13, line 3, change “can” to --cannot--.

In claim 14, line 2, replace “it has not found” with --the at least one service provider access server does not have--.

In claim 14, line 3, change “can” to --cannot--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 5-6, and 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Cane et al. (US 2002/0129047).

As per claims 1 and 12, Cane et al. teaches a multiple copy file backup system in a client (“subscriber server”) and server (“service provider access server”) environment. The teachings of Cane et al. also encompass backing up the file by the same (or original) user (as well as other users), which meets Applicant’s claim limitations of “receiving a request...which was previously transmitted...”. With reference to figure 1-A, in step 102, the server receives a unique user ID desiring to backup the contents of a file, wherein a file represents a “data increment” (“identifying at least one data increment...”). See paragraph [0033]. The server then checks to see if the file identifier is present in the file data table, wherein if the file identifier is located in the file data table then a copy of the file already exists at the server location (“checking at least one service provider access server to determine if it has a copy of at least a portion of the identified data increment...”). See steps 110 and 112 and paragraph [0033]. If the server contains a copy of the file, then a copy of the file is made on the back-up system (“backing up the data increment using the copy...”). See figure 1-C, step 130 and paragraph [0034].

As per claim 2, Cane et al. teaches, in step 102, using the File ID and User Name (“source address”) to identify the file (“evaluating one of...source address...at the subscriber server”). Inherently, in step 130, the File ID must be sent to back-up server when making the copy of the file.

As per claims 3 and 6, Cane et al. teaches that the file backup storage system may be on another server than the server 204. See paragraph [0022].

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As per claim 5, if a copy is sent from the client (figure 1-D), then no backup of the file is performed (i.e. delayed for a time period) until a second request for the file is made that results in the need to backup the file (e.g. figure 1-C).

As per claims 13-14, Cane et al. teaches using a copy sent from the client if the file is not located on the server. See step 112 in figure 1-A and figure 1-D.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cane et al. in view of Beeler, Jr. (5,974,563).

As per claim 4, Cane et al. does not teach computing a checksum to determine if the server has the same copy of the file the client has. Beeler, Jr. teaches calculating and comparing the checksums of each block of a file between a source and target such that only blocks that are different between the source and target are transmitted over the network. See column 15, lines 53-61. It would have been obvious to one of ordinary skill in the art to have modified Cane et al. to calculate and then compare checksums, as suggested by Beeler, Jr., because this would significantly reduce the amount of network traffic. See column 15, lines 61-64.

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***Response to Arguments***

6. Applicant's arguments filed 08 April 2004 have been fully considered but they are not persuasive.

Applicant argues that Cane et al. does not teach that the data to be backed up is data previously transmitted between the server and the same client that requests the backing up. However, Cane et al. teaches this limitation. While Cane et al. does teach that more than one user may back up the same file, the teachings of Cane et al. also encompass backing up the file by the same (or original) user, which meets Applicant's claim limitations.

Furthermore, the amended claim language does not preclude other users/clients from backing up the "same" file, but instead sets forth that the same (original) user also accesses the "same" file.

Finally, it is noted that in claims 1 and 12, there is no link between the "receiving" step or means and the other steps or elements of the claims. While Cane et al. encompasses backing up a file by the same (original) user, the other steps can be performed in response to other users accessing the file.

***Conclusion***

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any response to this final action should be mailed to:

Box AF  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

All "OFFICIAL" patent application related correspondence transmitted by FAX must be directed to the central FAX number at (703) 872-9306:

"INFORMAL" or "DRAFT" FAX communications may be sent to the Examiner at (703) 746-5693, only after approval by the Examiner.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Fourth Floor (receptionist).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald G. Bragdon whose telephone number is (703) 305-3823. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 4:30 PM and every other Friday from 7:00 AM to 3:30 PM.

The examiner's supervisor, Mano Padmanabhan, can be reached at (703) 306-2903.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

RGB  
May 4, 2004

*Reginald G. Bragdon*  
Reginald G. Bragdon  
Primary Patent Examiner  
Art Unit 2188